ground that the car went out of control just before the accident. The crucial issue was why? On the one hand, Mr. Subramaniam could not offer any reasonable explanation for the omnibus swerving off its normal course, which caused Mr. Kehar Singh to brake. In default of such explanation it was at least highly probable that Mr. Kehar Singh could have lost control for other reasons requiring careful consideration before they were eliminated. Assuming, for the sake of argument, that the appellant driver's story was true, what could have happened? At their respective speeds and distances from the bridge it is obvious that the vehicles should have to pass each other at or very near the bridge. There was good visibility on both sides of the bridge over a considerable distance. Hence Mr. Kehar Singh could not have failed to notice the approaching omnibus before he came to the bend. Having seen it, was he likely to contemplate meeting this huge vehicle at the same speed of travel within the limited confines of the bridge railings as he would on the open road? Or would he reduce speed? If, as I think, the latter course seemed the more likely, then his speed before and on taking the bend must be considered. It was stated by Mr. Subramaniam that Mr. Kehar Singh "applied his brakes with great force." This could very well have taken place, upon the omnibus being sighted, either at the bend itself or before the car was in a position to resume a straight course. It is common knowledge and experience among motorists that forceful application of the brakes when taking a bend at speed tends to cause skids and loss of control. In this case the residual speed of the car, even after braking, must have been still very high, to account for the broken bridge railing and the guide-stone (P.1 on the plan) being carried into the stream. Hence its speed at the bend could have been little short of the maximum.

After consideration of all the circumstances therefore, I am of opinion that the unfortunate accident was in all probability due to a combination of two factors, high speed and violent braking at the bend due to an error of judgment by Mr. Kehar Singh. With the greatest respect, I do not share the view that an experienced omnibus driver could have deliberately done anything so unaccountable and dangerous as to encroach on the path of an oncoming car merely in order to give the near-side bridge railings a wider berth.

With regard to the plan made by the investigating officer I must say that, making due allowances for its not having been drawn according to scale, the fact remains that, on material points, it supports the version given by the appellant driver. The collision could only have taken place close to where the two men in the car were ejected through their respective doors. The brake marks of the omnibus are also significant as showing a desperate attempt by the appellant driver, from well within his own half of the road, at the Rawang end of the bridge, to clear the whole roadway for the car by going on the grass himself, even if he had to knock down a guide-stone while doing so.

To conclude assuming that I am wrong in my judgment, it is my view that even on the balance of probabilities, which is the standard of proof in such cases, the onus of proof has not been discharged by the plaintiffs; *non sequitur* that, because the car went out of control and there must have been a cause, it necessarily followed that the reason given by Mr. Subramaniam should have been accepted as an inevitable conclusion.

I deeply regret that my judgment will deprive a bereaved family of the poor solatium of even the small monetary compensation they have been awarded, but hard cases make bad law.

For my part I would allow this appeal, since no case of negligence has been made out against the appellant driver.

Azmi C.J. (Malaya) and **Suffian F.J.** concurred.

Appeal allowed.

Solicitors: *Allen & Gledhill; Khoo & Sidhu; Mahendra & Hee.*

NG v. LIM

[F.C. (Tan Ah Tah F.J., Chua and Choor Singh JJ.) November 16, 1968]

[Singapore — Federal Court Civil Appeal No. Y.19 of 1968]

Family Law — Divorce — Cruelty — Proof beyond reasonable doubt — Finding of trial judge — Onus on appellant.

This was an appeal against the decision of Buttrose J. ([1968] 2 M.L.J. 100) who pronounced a *decree nisi* for the dissolution of the marriage between the parties. The learned trial judge had found that the appellant had been guilty of the matrimonial offence of cruelty.

Held, dismissing the appeal: it is incumbent on the appellant before he can succeed in the appeal, to show that the learned trial judge has erred in his assessment of the evidence or that he has misdirected himself or that for some other good reason the conclusion reached by him should be upset. In this case the appellant has failed to do so.

Case referred to:—

(1) *Gollins* v. *Gollins* [1963] 2 All E.R. 966.

FEDERAL COURT.

S.K. Lee for respondent/appellant.

G.S. Hill for the petitioner/respondent.

Cur. Adv. Vult.

Tan Ah Tah F.J. (delivering the judgment of the court): In this case a wife (hereinafter called the petitioner) presented a petition for

divorce against her husband (hereinafter called the respondent) alleging that, since the celebration of their marriage, the respondent has treated the petitioner with cruelty. The case was heard by Buttrose J., who pronounced a *decree nisi* for the dissolution of the marriage and made certain consequential orders. It is against this decision that the respondent has brought this appeal.

The respondent's conduct of which the petitioner complained was summarised by the learned trial judge in the following words:—

"The marriage did not turn out to be a happy one virtually right from the start and frequent quarrels broke out between them and they had nothing in common. The respondent was a man of ungovernable temper who would flare up for no reason at all. He was offensive and used obscene and vulgar language to her. She did not complain to her parents because she was too ashamed to do so. The respondent threatened that he would give her hell if she did so.

He often asked her if she wanted a divorce she had better think about it and if she wanted one he would give it to her. The respondent continually insisted that he was physically and mentally a superior being to her and that she must never stand up to him but must give way all the time. It was the petitioner who had to do the patching up after these scenes and frequently for days afterwards when she endeavoured to speak to him he would ignore her.

At parties and on social visits the respondent ignored her and went off to talk with his friends. On returning home he would become angry and ask her why she had sat there looking like a fool, so dumb and stupid. When going to the cinema he would stalk on ahead leaving her to wander along behind him and telling her if she walked so slowly she must walk by herself.

The respondent criticized her cooking saying that even a servant could do better. She drove the respondent to work every day and on arrival he would get out and slam the door without a word of thanks or even goodbye. The respondent never gave her enough pocket money and she was forced to go to work to obtain some and even after the birth of the baby.

With regard to their marital relations the respondent was rough and crude and would force himself upon her when she was about to fall asleep and very tired. If she ignored his advances he became very angry and said 'You think yourself so wonderful, if I want it and can't get it from you, I will go to a prostitute'.

The arrival of the child Yolanda brought no change in the respondent's conduct except that he was very happy over the baby and said to the petitioner that now they had Yolanda she would always come first. He even criticized his wife's bringing up of Yolanda. His gospel apparently was discipline with love. He resented his wife giving Yolanda a spanking on one occasion when he saw four red weals on her thigh. He resented her spending her own money. Then there was the incident of the $200 cheque which respondent was reluctant to give her and delayed doing so which was apparently the last straw which broke the camel's back.

In short the petitioner could do nothing right and finally as she could endure his conduct no longer and her health was breaking down she left him and sought refuge in the home of her parents."

Two doctors were called on behalf of the petitioner to give evidence as to the state of her health. These two doctors were Dr. Stephens and Professor Ransome. The medical evidence, which was accepted by the learned trial judge, was that at the time the petitioner left the respondent her condition was what could fairly be described as a moderately severe anxiety state; if this anxiety state was not checked and the cause of it was not removed, it could have led to a serious condition ultimately resulting in suicide. Dr. Stephens and Professor Ransome were both of the opinion that this anxiety state from which the petitioner was suffering was precipitated by the respondent's conduct and behaviour and a marital situation which was beyond reconciliation.

Counsel for the respondent has submitted that Professor Ransome's evidence should not be accepted because he is a very biassed witness. He has pointed out that Professor Ransome was a very good friend of the petitioner's father and has also referred to the fact that Professor Ransome had approached the respondent's sister and the latter's husband with a view to persuading the respondent to agree to a divorce. It is apparent from the record that the learned trial judge was fully aware of the dual role that was being played by Professor Ransome, the first being his official role as a consultant and the second being his self-appointed role as a mediator. The learned trial judge was of the opinion, which he expressed in his judgment, that Professor Ransome was ill-advised and misguided in his attempt to mediate in the proceedings. It was for that reason, among others, that the learned trial judge took the somewhat unusual course of having Professor Ransome recalled to the witness-box in order that he could satisfy himself as to the purpose of what he described as Professor Ransome's curious machinations in connection with the case. Having heard the further evidence given by Professor Ransome, the learned trial judge stated that he was quite satisfied as to his genuineness and honesty of purpose in doing what he did, regrettable though it was in the circumstances of this case, and further stated his view that Professor Ransome's professional opinion and evidence was in no way tainted or coloured thereby.

With regard to Dr. Stephens, counsel for the respondent put forward the argument that his evidence should not be accepted because he had been recommended to the petitioner's father by Professor Ransome and was therefore biassed in favour of the petitioner. Counsel for the respondent also suggested that the petitioner could have simulated the signs and symptoms described by Dr. Stephens. As to Professor Ransome's recommendation, it should be noted that he gave Dr. Stephens' name to the petitioner's father as that of an independent doctor. The learned trial judge was of the view, which he has expressed in his judgment, that Dr. Stephens was a completely disinterested witness who was merely performing his professional

duties in the correct and proper manner. As for the suggestion made by counsel for the respondent that the petitioner could have simulated the signs and symptoms described by Dr. Stephens, the learned trial judge has stated in his judgment that both Dr. Stephens and Professor Ransome were fully alive to the necessity of distinguishing between the malingerer and the genuine patient and he has also referred to the view expressed by Dr. Stephens that the petitioner did not overplay her hand when he examined her and there was a reasonable and coherent pattern about her statements.

Dr. Wong Yip Chong who was called by the respondent to give his opinion on the evidence of Dr. Stephens and Professor Ransome was at a disadvantage in comparison with those two doctors in that he had never seen or spoken to the petitioner. There was some discussion before us as to what Dr. Wong Yip Chong said during his cross-examination regarding the kind of depression from which the petitioner was suffering, and whether it was an exogenous or an endogenous depression. We have no doubt that on the evidence as recorded by the learned trial judge he was fully justified in referring to what was said by Dr. Wong Yip Chong in the following words:—

> "He did however say that if the symptoms as recorded by Dr. Stephens and confirmed by Professor Ransome were genuine and correct he considered that both of them were probably right in coming to the conclusion that it was an exogenous depression — an anxiety state."

It is convenient at this stage to summarize the learned trial judge's views on these three medical witnesses and their evidence. He deplored the part played by Professor Ransome in his attempt to mediate in the proceedings but was of the view that Professor Ransome's professional opinion and evidence was in no way tainted or coloured thereby. His assessment of Dr. Stephens was that he was a completely disinterested witness who was merely performing his professional duties in the correct and proper manner. He accepted the evidence of Professor Ransome and Dr. Stephens regarding the anxiety state from which the petitioner was suffering. As for Dr. Wong Yip Chong the learned trial judge stated that his evidence was of little real value in determining the issues in the case. The learned trial judge therefore found as a fact that there was injury to the petitioner's health and a reasonable apprehension of further serious injury to it.

We have considered the submissions of counsel for the respondent on the medical evidence in this case and we see no reason for taking a different view of the three medical witnesses or their evidence or for interfering with the finding of fact.

Another argument put forward by counsel for the respondent was based on the evidence given by Dr. Wong Heck Sing, who treated the petitioner on the 10th August 1966 when she was suffering from a cough. Dr. Wong Heck Sing's evidence was to the effect that he noticed no other symptoms apart from the cough. Counsel for the respondent has pointed out that Dr. Stephens' evidence regarding the state of the petitioner's health was based on his examination of the petitioner which took place on the 22nd September 1966. Since the interval of time was only about six weeks, counsel for the respondent has submitted that the petitioner's health could not have deteriorated to the extent described by Dr. Stephens and that therefore she must have simulated the signs and symptoms when she was being examined by Dr. Stephens. In considering this submission, it is necessary to remember that the petitioner had gone to see Dr. Wong Heck Sing in order to obtain a cure for the cough and, according to Dr. Wong Heck Sing's evidence, he was merely looking for the cause of the cough. It seems to us, too, that the anxiety state from which the petitioner was suffering could easily have arisen during the interval of about six weeks. There is also the fact that the learned trial judge has accepted Dr. Stephens' evidence that the petitioner was suffering from an anxiety state and that she was not a malingerer but was a genuine patient. For all these reasons we are of the opinion that there is no substance in this argument.

One of the complaints made by the petitioner regarding the respondent's conduct was that the respondent was rough and crude in his approach to marital relations and that he would force himself upon her when she was about to fall asleep and was very tired. In attempting to refute this allegation counsel for the respondent has pointed out that, in their desire to have a baby, both the petitioner and the respondent indulged in experiments under medical advice and frequently had sexual intercourse during those experiments. He has therefore submitted that the finding that the petitioner was upset by the respondent's roughness and crudity is against the weight of the evidence. In our view, the evidence which was accepted by the learned trial judge shows clearly that the occasions when the respondent was described as being rough and crude were not the occasions when experiments were being carried out by the petitioner and respondent. This submission must therefore fail.

Counsel for the respondent has laid stress on the principle that in the case of a petition for divorce based on cruelty the case against the respondent must be proved beyond reasonable doubt. He has submitted that in arriving at the decision to grant a *decree nisi* in this case the learned trial judge has overlooked this principle. In support of his argument he has quoted the following passage from the judgment:—

"I may say at once that I accept substantially the petitioner's version of their life together in preference to that of the respondent's. Indeed, the respondent's evidence goes some way towards supporting and confirming some of the petitioner's allegations."

Counsel for the respondent has argued that the language of this passage, including the use of the word "preference", indicates that the learned trial judge has applied the standard of proof in civil cases, where findings of facts can be arrived at on the balance of probabilities.

In considering this argument, it is necessary to examine other parts of the judgment. For example, in setting out certain admissions made by the respondent, the learned trial judge said:—

"He admitted that he had probably contributed to the unhappy state of affairs between them; that he should have been more understanding of her character; that he should have made modifications in his own character; that he should have lived more in the present and not planned for the future; that perhaps he had been too careful about money."

It is important to note that the learned trial judge's comment on these admissions was couched in the following terms:—

"I consider these to be gross understatements of the real position."

In another part of the judgment, certain allegations made by the respondent are set out as follows:—

"The respondent maintained that he was not guilty of cruelty, but if he was guilty of any of the acts alleged against him, which he denied, then he claimed that the petitioner had unreasonably provoked him or alternatively that she was suffering under the unwarranted impression of a persecuted person being an adopted child. He further asserted that any differences which had arisen between himself and his wife after the marriage had been wilfully advised and instigated by the petitioner's relations especially her mother and friends. The respondent denied that he was responsible for the ill-health of the petitioner and contended that it was due solely to her own short-comings and her inability to readjust herself to a normal married life."

It is significant that the learned trial judge's comment on this aspect of the case was as follows:—

"There is no substance, in my view, in any of these allegations."

In our opinion, the most significant part of the judgment may be found in the passage following the paragraph in which a reference is made to the case of *Gollins* v. *Gollins*.[1] This passage reads as follows:—

"The present case, in my view, falls squarely within the principles enunciated in *Gollins'* case (*supra*) and the respondent has, in my judgment, been guilty of the matrimonial offence of cruelty."

Having regard to the language used by the learned trial judge and to the tenor of his judgment and also to the fact that he was a judge of great experience in criminal law, who had heard criminal cases in the High Court for eleven years, we find it impossible to say that he has overlooked the principle that the case against the respondent had to be proved beyond reasonable doubt.

After seeing and hearing the witnesses and considering all the evidence, the learned trial judge arrived at the conclusion, to adopt his own words, that the combination of all the various factors, the cumulative reprehensible conduct of the respondent was sufficiently weighty to enable him to say that the petitioner ought not to be called on to endure it.

Since this is an appellate court, it is incumbent upon counsel for the respondent, before he can succeed in this appeal, to show that the learned trial judge has erred in his assessment of the evidence or that he has misdirected himself or that for some other good reason the conclusion reached by him should be upset. This, in our view, counsel for the respondent has failed to do. We are accordingly of the opinion that the judgment of the learned trial judge should stand.

In the result the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *S.K. Lee & Co.; Rodyk & Davidson.*

CHINA INSURANCE CO. LTD. v. ANG BAY KANG

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Choor Singh J.) November 17, 1968]

[Singapore—Federal Court Civil Appeal No. Y.27 of 1968]

Insurance — Motor insurance — User of car — — Car sent for repair — Testing of, on road by repairer — Accident — Whether car was used for the purpose of policyholder or in connection with motor trade.

The sole question in this appeal was whether the testing of a car on the road by a motor car repairer after repairs had been carried out was a use for a purpose in connection with the motor trade as provided in the relevant clause of the policy which prescribed limitation as to use as follows: "Use only for social, domestic and pleasure purposes and for the policyholder's business. The policy does not cover use for hire or reward, racing, pace-making, reliability trial, speed-testing, the carriage of goods other than samples in connection with any trade or business or use for any purpose in connection with the motor trade."

Held: every motor car owner who sends his car to the garage for repairs wants to be sure that it is in good running order when he receives it back and for this purpose he gives either directly or by implication authority to the garage proprietor to test the car after repairs and when the car is being tested on the road, it is being used on behalf of the owner i.e. the policyholder and therefore for the purpose of the policyholder to make sure that it is in good running order. Such use cannot be said to be a use "for a purpose in connection with the motor trade".